IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5407 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

N S VACHHANI

Versus

STATE OF GUJARAT

Appearance:

MR BP TANNA for Petitioner

Mr.Premal Joshi AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/01/2000

ORAL JUDGEMENT

#. Present petition has been filed by the petitioner who is a doctor praying to treat 24 days absence period as special leave with a further prayer that his leave period may be considered in his 3 years' teaching experience.According to the petitioner he was a student

of Post-Graduate in Ophthalmology and was doing his residency from 1.1.82 and in the usual course, the same would be over by 31.12.1985. But during last part of his residency there were strike of the students for which he had no option but to join and he had also to attend to important educational courses one at Delhi and another at Bangalaore and therefore, ultimately a question arose whether the aforesaid period should be considered in calculating the 3 years teaching experience or not. The petitioner has also asked for similar treatment which was given to one Dr. Maheshwari and therefore, he had filed the present petition with necessary prayer for treating his absence period to be included within the three years period of completing residency by condoning the said absence period.

#. At the time of admission of this petition, no interim relief was granted to the petitioner. The matter has now reached for final hearing today.

#. Mr. Premal Joshi learned AGP relied upon the affidavit in reply filed by Incharge Dean of M.P.Shah Medical College, Jamnagar which is at page 31 of the compilation. It was pointed out in para 5 of the affidavit in reply that the petitioner was irregular in attendance and was in the habit of remaining absent without submitting any leave report or taking prior permission of the department. It was pointed out that the period of attending conferences held at Delhi and Bangalore was treated as teaching experience and therefore, no different treatment was given to the petitioner. However, so far as the absence of 24 days were concerned, since the petitioner was remaining absent from duty, said period of 24 days cannot be condoned and therefore, it was prayed that the petition was required to be dismissed. It was also submitted that the petition is of 1987 and in all probability and by natural corollary, it has now become infructuous.

#. After hearing both the sides and considering the affidavit in reply in my opinion there is no substance in the petition. The period for which the petitioner had attended the conferences at Delhi and Bangalore was treated as teaching experience. Regarding the two instances cited by the petitioner i.e. Dr.Maheshwari and Dr.Mehta, necessary explanation is given on page 33 of the affidavit in reply. There is also affidavit in reply on record on page 52 making the position more clear. Considering the aforesaid affidavits I am of the opinion that there is no justification in the grievances of the petitioner. There is absolutely no discrimination at all

against the petitioner and as rightly pointed out by Mr. Joshi learned AGP, the grievance of the petitioner also by this time cannot be said to be existing in view of passage of time. However, as stated above, even on merits there is no substance in the petition. The petitioner is therefore, not entitled to get any relief from this Court under its extra ordinary jurisdiction under Article 226 of the Constitution of India.. In view of the aforesaid circumstances the petition deserves to be dismissed and the same is accordingly dismissed. Rule is discharged with no order as to costs.

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